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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,231

Applicant(s)

MERITT, RICK

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,14-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. Claims 2,9-13 have been canceled. Pending claims are 1,3-8,14-22.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1,7,8,22** are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 2886002) in view of Bartis (US 4815621).

For claims 1 & 22, O'Malley et al. disclose an animal feeder comprising: a feed hopper 16 having a filling end 72,73 and a feeding end 22,24, wherein the filling end has a cover 58 having an access door 74,75 with a lid 76,77; at least three legs 33-38, the proximate ends of the three or more legs permanently attached to the feed hopper; and a skid assembly 12,14 permanently attached to the distal ends of the three or more legs. However, O'Malley et al. are silent about the lid 76,77 being hinged and having at least one recess for breathability. Bartis teaches a storage container comprising the container itself and a cover 16 having an access door 18 with a hinged lid 68,72 (also the sidewall area that includes ref. 56), the hinged lid having at least one recess 56 for permitting vapors within the container to vent to the atmosphere (col. 4, lines 7-12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a hinged lid as taught by Bartis in place of the lid of O'Malley et al. in order to prevent the lid from being lost since it is hinged onto the cover and allow pivotal movement in opening and closing the lid. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the recesses as taught by Bartis on the hinged lid of O'Malley et al. as modified by Bartis in order to provide for ventilation (Bartis, col. 4, lines 7-12).

For claim 7, O'Malley et al. as modified by Bartis further disclose (emphasis on O'Malley) wherein skid assembly is releasable attached to a vehicle (col. 1, lines 35-40).

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For claim 8, O'Malley et al. as modified by Bartis further disclose (emphasis on O'Malley) wherein feed is distributed by gravity from the feeding end of the feed hopper.

4. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley as modified by Bartis as applied to claim 1 above, and further in view of Smeester (US 5740757).

O'Malley as modified by Bartis are silent about the feeding end of the feed hopper has a protective cage. Smeester teaches an animal feeder in which he employs a protective cage 118 to cover a feeding end of a hopper 72. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a protective cage as taught by Smeester at the feeding end of the hopper of O'Malley as modified by Bartis in order to protect the feeding end of the hopper from being damaged by combative nature of the animals (Smeester, col. 7, lines 3-6).

5. **Claims 4 & 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley as modified by Bartis as applied to claim 1 above, and further in view of Dubbert et al. (US 5339996).

For claim 4, O'Malley as modified by Bartis are silent about a ladder for accessing the filling end of the feed hopper. Dubbert et al. teach an animal feeder system in which they employ a ladder 37 for accessing a filling end 13 of a feed hopper 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a ladder as taught by Dubbert et al. in the animal feeder of O'Malley as modified by Bartis in order to allow a user access for filling the hopper with feed.

For claim 5, in addition to the above, Dubbert et al. teach a platform 43. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a platform as taught by Dubbert et al. in the animal feeder O'Malley as modified by Bartis in order to allow a user access for filling the hopper with feed.

6. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley as modified by Bartis as applied to claim 1 above, and further in view of Hill et al. (US 6073587).

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In addition to the above, O'Malley et al. as modified by Bartis (emphasis on O'Malley) teach that the feeder is made from an "all metal construction" (col. 1, line 64). However, O'Malley as modified by Bartis are silent about the metal construction being plate steel. Hill et al. teach an outdoor animal enclosure being fabricated out of plate steel because plate steel is sturdy, easily transported and weather resistant (col. 4, lines 22-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the feed hopper of O'Malley et al. as modified by Bartis from plate steel as taught by Hill et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for sturdy, easily transported and weather resistant) as a matter of obvious choice.

7. **Claims 14,15,20,21** are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 2886002).

For claim 14, O'Malley et al. teach an animal feeder as described in the above. However, O'Malley et al. are silent about the feeder being "one-piece". It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feeder of O'Malley et al. be one-piece construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

For claims 15,20 & 21, please see the above explanation for O'Malley's teaching.

8. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 2886002) in view of Smeester (US 5740757). Please see explanation for claim 3.

9. **Claims 17 & 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 2886002) in view of Dubbert et al. (US 5339996). Please see explanation for claims 4 & 5.

10. **Claim 19** is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Malley et al. (US 2886002) in view of Hill et al. (US 6073587). Please see explanation for claim 6.

Response to Arguments

11. Applicant's arguments filed 7/25/03 have been fully considered but they are not persuasive.

Applicant argued that O'Malley et al. do not disclose a feed hopper wherein the filling end has a cover having an access door with a hinged lid. Although O'Malley et al. disclose closure caps, caps are not lids and are not breathable. Applicant submits that the O'Malley reference in fact teaches away from a breathable lid by indicating the desirability of a tight fitting lid. O'Malley et al. have been combined with Bartis for this argued limitation. In addition, caps on O'Malley et al., if not lids, are considered functional equivalent to that of lids since they both function to close off an interior or opening of an element. By replacing the lid of O'Malley with the hinged lid of Bartis no way alters O'Malley's teaching of the feeder because the hinge lid of Bartis would still perform the same as the lid of O'Malley's. A tight fitting closure as taught in O'Malley does not mean that O'Malley teach away from breathable lid as alleged by applicant. A tight fitting lid for the feeder is meant by O'Malley to be that the lid is fitted tightly at the opening 74,75 so that the lid will not slip off easily from the hopper. The tightly fitting lid of O'Malley is not intended to keep the hopper airtight or non-breathable because that would not be possible since the feeding ends 22,24 are exposed to the atmosphere. The lid of O'Malley is simply for closing off openings 74,75 and nothing more. A breathable lid can be tight fitting also in that it tightly fits around the opening that it is protecting so that the lid will not slip off easily.

Applicant argued that there is no suggestion to combine the O'Malley and Bartis references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the above

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rejection explained, the suggestion is taught in Bartis to have a hinged lid with recesses for ventilation (see Bartis, col. 4, lines 10-11).

Applicant argued that the proposed modification would render the invention of O'Malley unsatisfactory for its intended purpose because the access door of O'Malley is meant to allow feed to freely flow into the hopper; however, the Bartis reference teaches an inlet box including a screen for removing debris from liquid as it is being introduced. Clearly, the inlet of Bartis would prevent, rather than allow, feed to flow into the hopper of O'Malley. The Examiner is not relying on Bartis for his teaching of the inlet box with the screen (see above rejection); instead, the Examiner is merely relying on the fact that Bartis teaches an access door 18 having a hinged lid with recess (as explained in the rejection) and nothing more. A hinged lid is extremely well known in the art and Bartis is relied upon to demonstrate this well known idea.

Applicant argued that Bartis teaches that vapors may vent into the atmosphere through the apertures 56 only when the lid is in the open position, and that Bartis lid is not breathable. It is unclear how applicant concluded that vapors may vent into the atmosphere through the apertures 56 only when the lid is in the open position because no where in Bartis states this at all. In addition, the lid of Bartis is breathable through apertures 56 which is, as explained in the above, part of the lid because the Examiner is consider the lid to be refs. 72,68 and the sidewall area that includes ref. 56.

Applicant argued that Bartis is a non-analogous reference. In response to applicant's argument that Bartis is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Bartis is an analogous reference because Bartis teaches a storage container with lid and so does O'Malley. What one puts in the container is of choice as long as the container is capable of holding something such as feed. In addition, since Bartis was merely relied upon for teaching the hinged lid with recesses, this lid is analogous with the lid of

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O'Malley because it is reasonably pertinent to the particular problem with which applicant was concerned, in this case, a hinged lid with recesses.

Applicant argued that there is no reasonable expectation of success in modifying O'Malley with, besides Bartis, Smeester, Dubbert et al., Hill et al.

Smeester teaches an animal feeder in which he employs a protective cage 118 to cover a feeding end of a hopper 72. Dubbert et al. teach an animal feeder system in which they employ a ladder 37 for accessing a filling end 13 of a feed hopper 5. Hill et al. teach an outdoor animal enclosure being fabricated out of plate steel because plate steel is sturdy, easily transported and weather resistant (col. 4, lines 22-32). The motivation to combine or reasonable expectation of success would be: for Smeester, it would protect the feeding end of the hopper of O'Malley as modified by Bartis from being damaged by combative nature of the animals; for Dubbert et al., it would allow a user access for filling the hopper with feed by the use of the ladder; and for Hill, it would be a material of choice for its suitability for the intended use (for sturdy, easily transported and weather resistant).

Applicant argued regarding the "one-piece" feeder against O'Malley. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feeder of O'Malley et al. be one-piece construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. In addition, the phrase "one piece" can be interpreted as one whole unit, which the feeder of O'Malley is one piece feeder if looking at the whole unit assembled. Furthermore, it is believe that the present invention comprises multiple parts attached together to form one piece feeder and not an actual "one piece" feeder from one single sheet of metal, as in a blank, without parts being attached together (see support throughout applicant's specification).

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen

Primary Examiner, GAU 3643

October 05, 2003